# United States Department of Labor
# Employees' Compensation Appeals Board

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| **C.B., Appellant** | ) | |
| **and** | ) | **Docket No. 19-0121** |
| | ) | **Issued: July 2, 2019** |
| **U.S. POSTAL SERVICE, POST OFFICE, South Cottage Grove, IL, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### ***JURISDICTION***

On October 22, 2018 appellant filed a timely appeal from a May 3, 2018 merit decision and a September 17, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

### ***ISSUES***

The issues are: (1) whether appellant has met his burden of proof to establish a recurrence of the need for medical treatment causally related to his accepted February 12, 2013 employment

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

injury; and (2) whether OWCP properly denied appellant's August 27, 2018 request for reconsideration of the merits of his claim pursuant to 5 USC § 8128(a).

## ***FACTUAL HISTORY***

On February 13, 2013 appellant, then a 54-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he developed left arm, elbow, and shoulder conditions due to repetitive casing and delivering of mail while in the performance of duty. OWCP accepted the claim for disorder of bursae and tendons in left shoulder region. It paid appellant intermittent wage-loss compensation benefits on the supplemental rolls from April 13, 2013 until July 11, 2014.

On January 2, 2014 Dr. William J. Baylis, an osteopath and a Board-certified orthopedic surgeon, released appellant to full-time work with restrictions. Appellant retired, effective May 23, 2014, and elected Office of Personnel Management benefits as of June 13, 2014. On August 21, 2014 Dr. Baylis released appellant from his care.[3]

On January 26, 2018 appellant filed a notice of recurrence (Form CA-2a) alleging a need for additional medical care for his accepted February 12, 2013 employment-related conditions. He noted that on September 26, 2016 he experienced a sharp pain in his left shoulder while carrying grocery bags. It resembled the pain appellant had when originally injured. Appellant also indicated that he did not receive any medical treatment following the recurrence.

Appellant submitted medical reports, treatment plans, and physical therapy orders from Dr. Baylis dated February 15 and October 24, 2013 and February 13 and July 8, 2014, along with a January 20, 2014 physical therapy note.

By development letter dated February 23, 2018, OWCP informed appellant that the evidence of record was insufficient to support his recurrence claim. It advised him of the medical and factual evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, OWCP received additional medical reports from Dr. Baylis from 2013, 2014, and 2015, diagnostic testing dated February 12, 2012, July 21, 2013, and February 13, 2014, and physical therapy reports from 2013 and 2014. It also received a February 20, 2018 letter from the employing establishment controverting the claim.

By decision dated May 3, 2018, OWCP denied appellant's claim for a recurrence of the need for medical treatment. It noted that he was last exposed to the work factors associated with the February 12, 2013 work injury on May 14, 2014 and that he had described an intervening cause on his recurrence form. Based on those findings, OWCP denied the claim for recurrence as he had

[3] By decision dated April 1, 2015, OWCP issued appellant a schedule award for four percent permanent impairment of the left upper extremity.

not established that he suffered a worsening of his accepted work-related conditions without intervening cause.

Appellant requested reconsideration on August 27, 2018. No additional evidence or argument was submitted.

By decision dated September 17, 2018, OWCP denied appellant's request for reconsideration of the merits of his claim, finding that he neither raised substantive legal questions nor submitted relevant and pertinent new evidence.

## ***LEGAL PRECEDENT -- ISSUE 1***

The United States shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability, or aid in lessening the amount of any monthly compensation.[4]

A recurrence of a medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.[5] An employee has the burden of proof to establish that he or she sustained a recurrence of a medical condition that is causally related to his or her accepted employment injury without intervening cause.[6]

If a claim for recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report supporting a causal relationship between the claimant's current condition and the original injury in order to meet his or her burden.[7]

To meet this burden of proof, the employee must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, supports that the condition is causally related and supports his or her conclusion with sound medical rationale.[8] Where no such rationale is present, medical evidence is of diminished probative value.[9]

[4] 5 U.S.C. § 8103(a).

[5] 20 C.F.R. § 10.5(y).

[6] *T.B.*, Docket No. 18-0762 (issued November 2, 2018); *E.R.*, Docket No. 18-0202 (issued June 5, 2018).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4(b) (June 2013); *see E.G.*, Docket No. 18-1383 (issued March 8, 2019); *see also J.M.*, Docket No. 09-2041 (issued May 6, 2010).

[8] *A.C.*, Docket No. 17-0521 (issued April 24, 2018); *O.H.*, Docket No. 15-0778 (issued June 25, 2015).

[9] *A.C., id.; Michael Stockert*, 39 ECAB 1186 (1988); *see Ronald C. Hand*, 49 ECAB 113 (1997).

## ***ANALYSIS -- ISSUE 1***

The Board finds that appellant has not met his burden of proof to establish a recurrence of the need for medical treatment causally related to his accepted February 12, 2013 employment injury.

Appellant filed a notice of recurrence of medical treatment for shoulder symptoms after September 26, 2016. He has not established by the weight of the reliable, probative, and substantial evidence a change in the nature and extent of the injury-related condition resulting in required continued medical treatment. The medical evidence appellant submitted was from years prior regarding his original injury and thus not relevant to the need for medical treatment on or after September 26, 2016. Appellant did not submit a medical report from a physician who, on the basis of a complete and accurate factual and medical history, concluding that he required further medical treatment for his accepted conditions on or after September 26, 2016 as a result of his accepted February 12, 2013 employment injury.[10] Additionally, OWCP properly noted that the claimed event of September 26, 2016, carrying grocery bags, appeared to be an intervening cause. As appellant has not submitted medical evidence showing a recurrence of medical condition due to his accepted employment injury without intervening cause, the Board finds that he has not met his burden of proof.[11]

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

## ***LEGAL PRECEDENT -- ISSUE 2***

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.[12] OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.[13] One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.[14]

A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously

[10] *See E.G., supra* note 7; *K.P.*, Docket No. 15-1711 (issued January 14, 2016).

[11] *See E.R., supra* note 6.

[12] This section provides in pertinent part: the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

[13] 20 C.F.R. § 10.607.

[14] *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the integrated Federal Employees' Compensation System (iFECS). Chapter 2.1602.4b.

considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.[15] When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.[16]

## ***ANALYSIS -- ISSUE 2***

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

Appellant requested reconsideration on August 27, 2018, but did not submit any additional argument with his request. As his timely request for reconsideration did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered by OWCP, appellant was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

Furthermore, appellant failed to submit relevant and pertinent new evidence in support of his request for reconsideration. The underlying issue on appeal involved whether he has established a recurrence of the need for medical treatment causally related to his accepted employment injury without intervening cause. This is a medical issue which must be determined by rationalized medical evidence.[17] Because appellant failed to submit new evidence along with his reconsideration request, he was not entitled to a review of the merits of his claim based on the third above-noted requirement under section 10.606(b)(3).[18]

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

## ***CONCLUSION***

The Board finds that appellant has not established a recurrence of the need for medical treatment causally related to his accepted February 12, 2013 employment injury. The Board also

[15] 20 C.F.R. § 10.606(b)(3).

[16] *Id.* at § 10.608.

[17] *E.D.*, Docket No. 18-0138 (issued May 14, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[18] *H.H.*, Docket No. 18-1660 (issued March 14, 2019).

finds that OWCP properly denied appellant's August 27, 2018 request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the September 17 and May 3, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 2, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board